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Delaware Indians of Indian Territory.

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DELAWARE INDIANS OF INDIAN TERRITORY.

MAY 27, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PEEL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 10549.]

The Committee on Indian Affairs, to whom was referred House bill 8283, having had the same under consideration, beg leave to submit the following as a substitute:

The substitute herein submitted covers all the items enumerated in original bill except that included in section 1.

The second section of the original bill provides for the payment to the Delaware Indians for twenty-three sections of lands at \$2.50 per acre, which lands they failed to get as provided in their treaty of 1829. The failure consisted of the fact that the Government had, prior to said treaty, assigned and transferred the said twenty-three sections to the half-breed Kaw or Kansas Indians, and therefore could not deliver the same to the Delawares as agreed in the treaty of 1829.

Under the treaty of 1860 with these Indians (12 Stat., 1127) the United States agreed to pay the Delawares a fair valuation for these lands. That was never done. Under the treaty of 1866 (14 Stat., 794) the Secretary of the Interior was authorized to sell the remainder of their reservation at a uniform price of \$2.50 per acre. There is no evidence to show but what the twenty-three sections under consideration were equally as valuable as any that was sold at \$2.50 per acre. The Indian Office, however, seems to think that because the fourteenth article of the treaty of 1866 provided that the Delawares should have the amount of the twenty-three sections in their new reservation in the Indian Territory, and inasmuch as the lands there only cost \$1 per acre, that \$1 per acre, with 5 per cent. interest, should be the basis of settlement.

It is not contended that under that or any other treaty the twenty-three sections of land in kind have ever been given these Indians, nor is it contended that in the transaction between the Delawares and the Cherokees, by which the Delawares procured their lands in Indian Territory, that any credit whatever was given to the Delawares. From the books, as shown by office letter hereto attached as a part of this report, that the Delaware purchase from the Cherokees was 157,600 acres of land, at \$1 per acre, and for that the office charged the Delawares with the price, to wit, \$157,600, and credited the Cherokees with the same, which simply transferred the price to be paid from the Delaware trust fund to that of the Cherokees, the twenty-three sections of land under consideration not being reckoned either in kind or its value. So that provision of the treaty of 1866 has never been carried out, and your committee can not see the justice of making the price of the land they did purchase

the basis of settlement instead of the real value of the lands in Kansas that the Government conveyed to them that it did not have to convey.

According to the treaty of 1829 this land was sold to the Delawares and they never have had possession of an acre of it or a dollar for it, so they have been kept out of the use of the lands as well as its value for over sixty years. Now, to refuse to pay them less than the value of it at the time it was sold to them seems to your committee very unjust; in fact, in ordinary business matters the value of the land at the time of sale to them in 1829, with reasonable interest, would be the measure of damages. The office, as will be seen from their appended letter, proposes to give or pay \$1 per acre (14,720 acres), with 5 per cent. interest from date of the purchase from the Cherokees of their new reservation to May 13, 1890, making \$15,456, aggregating \$30,176.

At \$2.50 per acre, as claimed in the bill, the amount would be \$36,800, making a difference of something over \$6,000.

Your committee, after a full consideration of the case, believe it just and right that they are entitled to \$2.50 per acre, the value of the land at the time the remainder of their reservation was sold, and so recommend. In the second clause of section 2 of original bill it is provided that the sum of \$26,402 be paid the Delawares for stock stolen from them. From the office letter hereto appended, it appears that this item has been thoroughly investigated by Special Indian Agent Pratt and found correct, the payment of which is recommended in said letter. It seems clear that this claim is correct and ought to be paid. Third clause of section 2 of the original bill provides for the payment of \$9,500 to the Delawares for cattle and ponies, as provided in sixth article of the treaty of 1860. The Indian Office says that this item has never been paid, and recommends its payment, in which your committee concur.

The remaining clause of section 2 of original bill provides for the payment of damages to the individual members of the Delaware tribe of Indians through whose lands the Leavenworth, Pawnee and Western Railroad was granted right of way. As provided in article 12, treaty of 1854, the Indian Office recommends that the sum of \$39,675.16 be appropriated for that purpose, and that suit be brought against said railroad company to re-imburse the Government, and submits a draught to substitute for the original item, which draught your committee adopt and insert in the substitute herewith reported, and recommend that said substitute do pass.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 20, 1890.

SIR: I am in receipt, by indorsement from Hon. S. W. Peel, as follows:

"Please give me your office report on section 2 of this bill. In short, on all the bill except section 1, and greatly oblige. The Delaware delegates are anxious to have your office report on all of this bill except section 1" of a bill (H. R. 8283) entitled "A bill providing for the payment per capita of the trust funds of the Delaware Indians of the Indian Territory, and for other purposes;" also of a letter of May 15, 1890, from Mr. Peel asking for a report in connection with the said bill on the claim of the Delawares for \$30,000 and interest on account of depredations on their timber as per the fourteenth article of the treaty of 1866 (14 Stats., 797).

That part of the bill on which it is desired that this office will report, section 2, is as follows, viz:

"SEC. 2. That the following sums be, and the same are hereby, appropriated out of any moneys in the Treasury not otherwise appropriated, to be paid to the said tribe in the same manner provided in the foregoing section:

"The sum of thirty-six thousand eight hundred dollars, in payment for twenty-

three sections of half-breed Kaw lands, as provided in the fourteenth article of the treaty of July fourth, eighteen hundred and sixty-six.

"The sum of twenty-six thousand four hundred and two dollars in payment for stock stolen from said tribe, which payment is provided for in the fourteenth article of the said treaty of July fourth, eighteen hundred and sixty-six: *Provided*, That said sum shall be paid per capita to the persons or their heirs at law who actually lost said stock, as shown by the report of the Secretary of the Interior to Congress, dated January thirty-first, eighteen hundred and seventy.

"The sum of nine thousand five hundred dollars for ponies and cattle stolen from said tribe, indemnity for which is provided in the sixth article of the treaty of May thirtieth, eighteen hundred and sixty.

"The sum of twenty thousand dollars, or so much thereof as may be necessary, to be paid as damages to the individual members of said tribe through whose allotted lands the Leavenworth, Pawnee and Western Railroad secured right of way, as provided in article twelve of the treaty of May sixth, eighteen hundred and fifty-four: *Provided*, That the amount due each member of said tribe claiming such damages shall be determined by the Secretary of the Interior."

In reply I have to say, as to the item of appropriation, provided for by second paragraph of the section above quoted, in payment for twenty-three sections of half-breed Kaw lands, that from the records and files of this office it appears that at the treaty of September 24, 1829 (7 Stats., 327), between the Delaware Indians and the United States, the boundary of the reservation then set apart for those Indians in Kansas, included certain lands, amounting to twenty-three sections, or 14,720 acres, previously set apart for the half-breed Kaw (or Kansas) Indians (7 Stats., 270) and that, by reason of this previous assignment of the said twenty-three sections of land, the Delawares were deprived of the use of so much of their reservation. By the treaty of 1860 (12 Stats., 1127) with the Delawares, it was agreed that a fair valuation should be made by the United States upon lands, "under the direction of the Secretary of the Interior, and that the amount of said valuation shall be paid the Delawares."

By the treaty of 1866 (14 Stats., 794), the Secretary of the Interior was authorized to sell all the remaining part of the reservation of these Indians, at a uniform price of \$2.50 per acre. As this remaining part of the reservation was sold under provision of the treaty above referred to at \$2.50 per acre, to the Leavenworth, Pawnee and Western Railroad Company, or its successor, it is claimed by the Indians that they are entitled to receive \$2.50 per acre as a fair valuation for the twenty-three sections of half-breed Kaw lands deducted from the area of their reservation in Kansas, and the bill now under consideration proposes to pay that price.

As, however, the fourteenth article of the said treaty of 1866 repealed the agreement on the part of the United States in its treaty of 1860 to pay the Delawares a fair valuation for the said twenty-three sections of land, and in lieu thereof it was agreed that "the Delawares shall receive, without cost, from the United States land included within their new reservation to the amount of twenty-three sections, in place of the twenty-three sections of half-breed Kaw lands," I am of the opinion that the United States is now under no obligation to pay the Delawares the price they ask, or to consider in any way in connection with their claim the value of the Kansas lands.

The new reservation provided for the Delawares, to which reference is made in the treaty of 1866, consists of 157,600 acres of land in the Indian Territory, which was purchased from the Cherokees, by an agreement between the Delawares and Cherokees of April 8, 1867, approved by the President April 11, 1867, which agreement was entered into in pursuance with the provisions of the fifteenth article of the Cherokee treaty of 1866 (14 Stats., 803). The price paid the Cherokees for this reservation was \$1 per acre, and in payment thereof the sum of \$157,600 was transferred from the Delaware trust fund to the credit of the trust fund of the Cherokee Nation on the books of this Government.

No credit was given the Delawares for the twenty-three sections which the Government had promised they should have without cost, and those Indians are now entitled to have the price of that amount of land, \$14,720, which was improperly deducted from their trust fund, and used in part payment to the Cherokees for the lands granted by them, restored to their said trust fund on the books of the United States, and inasmuch as the said Delaware trust fund bears interest at 5 per cent. per annum, I think it but just and right that the Indians should be paid 5 per cent. on the said \$14,720, from the date when that amount was improperly deducted from their fund. The transfer from the Delaware fund to the Cherokee fund of the amounts due the Cherokees by the Delawares under their agreement of April 8, 1867, was made May 13, 1869, and 5 per cent. interest on the \$14,720, the price paid by the Delawares for the twenty-three sections of land the Government promised they should have without cost, from that date to May 13, 1890, amounts to \$15,456, which with the principal, \$14,720, makes a total sum which the Delawares are entitled to receive on

account of the claim now under discussion of \$30,176, and I have the honor to recommend that the House Committee on Indian Affairs be requested to amend that paragraph of the bill which relates to the said claim by striking out the words "thirty-six thousand and eight hundred," and inserting in lieu thereof the words "thirty thousand one hundred and seventy-six." With this amendment the proposition meets with my approval, and I would recommend its adoption by Congress.

The same article of the treaty of 1866, which provides for giving the Delawares twenty-three sections of land in their new reservation in place of the twenty-three sections of Kaw Half-breed lands in Kansas, also provides that "there shall be credited to the Delawares, in the purchase of their new reservation in the Indian country, the sum of \$30,000, which credit by the United States shall be received by the Delawares as a full settlement of all claims against the Government for depredations upon timber to the date of the signing of this treaty."

In the settlement of the account between the Delawares and the Cherokees on account of the purchase of the new reservation for the Delawares in the Cherokee country, no credit of \$30,000 was given these people as provided in this treaty, but it appears that the sum of \$31,000 was appropriated by the Indian appropriation act of March 2, 1867 (14 Stats., 500), "to be placed to the credit of the Delawares in the purchase of their new reservation in the Indian country, by provisions of treaty of July 4, 1866," and that this sum was, under date of April 28, 1874, placed in the hands of Secretary Delano for investment to re-imburse the Delaware trust fund from which the money was deducted to pay for their new reservation in the Cherokee country. This fund was invested in that year, 1874, in United States bonds, loan of 1865, the proceeds of which bonds are now held to the credit of the trust fund of the Delawares.

In the report of the Commissioner of Indian Affairs for the year 1874, at page 149, the following in relation to this sum of \$30,000 occurs, viz:

"Investment of \$30,000 for the Delawares.—This investment, to be understood, requires a full explanation.

"An agreement having been made April 8, 1867, between the Cherokee and Delaware Indians, for the sale by the former to the latter of a portion of their lands for a new reservation for the Delawares, a transfer of stocks amounting to \$157,600, was effected May 13, 1869, upon the trust-fund books of the Department, from funds belonging to the Delawares to the credit of the Cherokees, being the amount required to pay for said reservation; but provision had been made by the 14th article of the Delaware treaty of July 4, 1866, that the United States should credit the Delaware Indians with the sum of \$30,000 to aid them in the purchase of a new reservation, and Congress appropriated said amount, by an act approved March 2, 1867 (Stat., vol. 14, p. 500). This item of \$30,000 not having been considered in the transfer above referred to, it has been invested in United States bonds, in accordance with a decision of the Second Comptroller of the Treasury, to re-imburse the fund from which the transfer was made."

The Government has, therefore, carried out its promise to the Delawares in regard to this matter, and those Indians now have no claim on account of depredations on their timber prior to the treaty of 1866.

The next item of the bill on which this office is requested to report proposes to appropriate \$26,402 in payment for stock stolen from the Delawares, as provided for in the fourteenth article of the treaty of July 4, 1866 (14 Stats. 793).

The clause of article fourteen of the said treaty of 1866, which has relation to this claim, is as follows, viz:

"And inasmuch as the Delawares claim that a large amount of stock has been stolen from them by whites since the treaty of 1854, the United States agree to have a careful examination of such claims made, under the direction of the Secretary of the Interior, and when the value of such stolen stock shall have been ascertained, the same shall be reported to Congress with a recommendation for an appropriation to pay for the same; and all money appropriated for such purpose shall be paid to the owners of said stock."

In accordance with this provision of the treaty, this office by direction of the Department under date of September 9, 1867, instructed United States Special Indian Agent John Pratt to make a careful examination of the claims referred to, and ascertain the value of the stock stolen.

In his report of January 19, 1869, on the subject, Agent Pratt stated the aggregate of the claims found by him to be just and equitable, at \$26,234, but it appears that upon an examination made in this office errors and omissions were found in the agent's report which would increase the aggregate to \$26,402; and in a report, January 27, 1870, from this office on the subject, duplicate copies of Agent Pratt's report were transmitted to the Department with the recommendation that the said report be approved, and that Congress be asked to appropriate the amount of \$26,402 to pay the claims in accordance with the provision of the treaty.

Under date of January 31, 1870, the Secretary of the Interior transmitted the papers on the matter to the President of the Senate, invited the favorable consideration of

the subject by Congress, and recommended that the sum found due the Indians be appropriated to pay the claims.

A copy of House Report No. 1348, Forty-eighth Congress, first session, which contains a copy of Agent Pratt's report on these claims and a part of the correspondence of this office and the Department relative thereto, is herewith inclosed; and inasmuch as the claims are just, the amount to be appropriated is sufficient to cover the ascertained value thereof; and as the United States is obligated to pay the value of the said claim as ascertained by an examination made by this Department, this item of the bill should, in my opinion, be adopted by Congress.

The third item of the bill upon which my report is desired proposes to appropriate \$9,500 to pay for ponies and cattle stolen from the Delawares, indemnity for which is provided in the sixth article of the treaty of May 30, 1860 (12 Stats., 1129), with those Indians.

The sixth article of the treaty of 1860 provides that "the United States shall pay them, within twelve months from the ratification of these articles of treaty and convention * * * nine thousand five hundred dollars as indemnity for ponies and cattle that have been stolen from them by the whites since their last treaty with the United States."

It does not appear from the books of this office that this provision or treaty has ever been complied with, and in view of the direct promise of the United States in that treaty to pay the sum mentioned, it would seem to me that the honor of the Government and good faith with the Indians demand that the appropriation of the sum proposed should be made. I recommend that this item of the bill be adopted by the Congress.

The other provision of the bill upon which a report from this office is desired has relation to the payment of damages to the individual members of the Delaware tribe through whose allotted lands the Leavenworth, Pawnee and Western Railroad secured right of way, as provided in article twelve of the treaty of May 6, 1854 (10 Stats., 1048).

This bill proposes to appropriate \$20,000, or so much thereof as may be necessary, to pay the damages due the Indian claimants.

I am informally advised that it was the intention of the framers of the bill to appropriate \$30,000 for this purpose, but that by a clerical error the word "twenty" was used instead of "thirty." As the damages on account of the right of way over the allotments were appraised by a board convened by this Department in 1866, at \$28,959.41, this statement is believed to be true.

House bill 5618, Forty-ninth Congress, first session, proposed to make an appropriation to pay these claims, and under date of March 11, 1886, this office submitted a report on the claims and a substitute for the bill, so as to make appropriation also for the payment of claims for improvements on the land sold to the Leavenworth, Pawnee and Western Railroad Company, and authorize and direct the Attorney-General to institute legal proceedings against the said railroad company, its successors or assigns, for re-imbursement to the United States of the sums found due the Indians on account of these claims.

Inasmuch as the United States is responsible to the Delawares for the payment of the claims, both for damages on account of the right of way over the allotted lands and for the improvements on lands sold the railroad company, and inasmuch as the said railroad company is liable for both, I am of opinion that these two classes of claims should be considered and acted upon together; and that provision should be made at the same time for compelling the railroad company to discharge its liability in relation thereto.

I have the honor, therefore, to transmit herewith a copy of the report of March 11, 1886, on the subject, as embodying the views of this office thereon, and to recommend that the House Committee on Indian Affairs be requested to strike out the clause of the bill relating to the matter, and insert in lieu thereof the following, viz:

The sum of thirty-nine thousand six hundred and seventy-five dollars and sixteen cents, of which ten thousand seven and fifteen dollars and seventy-five cents shall be paid to individual members of the said tribe for improvements upon lands sold to the Leavenworth, Pawnee and Western Railroad Company, under the provisions of the treaty with the Delaware tribe of Indians of date May thirtieth, eighteen hundred and sixty, in accordance with the concluding paragraph of article two of said treaty, and twenty-eight thousand nine hundred and fifty-nine dollars and forty-one cents, shall be paid to the individual members of said tribe through whose allotted lands the said Leavenworth, Pawnee, and Western Railroad Company secured right of way, in accordance with the concluding clause of article three of the said treaty of May thirtieth, eighteen hundred and sixty: *Provided*, That the amount to be paid each member of said tribe claiming indemnity for improvements taken, and damages on account of right of way of said railroad company through the allotted lands shall be determined by the Commissioner of Indian Affairs and approved by the Secretary of the Interior.

And the Attorney-General is hereby authorized and directed to institute the necessary legal proceedings against the Leavenworth, Pawnee and Western Railroad Company, its successors or assigns, for recovery of the amounts heretofore found by the Department of the Interior, to be due from said railroad company, its successors or assigns, under the last paragraph of the second article of the treaty with the Delaware tribe of Indians of May thirtieth, eighteen hundred and sixty, and under the concluding clause of the third article of said treaty, and for damage done the said Indians in the taking and destruction of their property by said railroad company, which sums when recovered shall be used to re-imburse the United States for the sum appropriated in the foregoing paragraph of this bill.

If amended, as herein suggested, section 2 of the bill under consideration provides for the payment of just claims which should have been satisfied many years ago, and the payment of which has been repeatedly recommended by this office and the Department, as will be seen from the public documents inclosed herewith.

I recommend that the committee be requested to give its favorable consideration thereto.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.